

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) AO NO.21/2016

**915 APEAL FROM ORDER NO. 21 OF 2016
WITH CA/4770/2016 IN AO/21/2016**

RAMDAS LAXMAN DHAKE
VERSUS
VASANT RAJARAM DHAKE AND OTHERS

...
Advocate for Petitioner : Mr.Bhandari Anand P.
Mr.P.R.Patil, Adv., h/f Mr.G.V. Wani, Adv. for R/1 To 5
Mr.D.B.Thoke, Adv., for respondent nos. 6 to 10.
Mr.Vinod P.Patil, Advocate, for respondent no.4.

...
CORAM : P.R. BORA, J.
Dated: August 10, 2016
...

PER COURT :-

1. After having heard the learned Counsel appearing for the parties for some time and on perusal of the order passed by the learned Civil Judge on 6th of July, 2015, below Exh.28, in Regular Civil Suit No.293/2014, whereby he has rejected the suit plaint under Order VII Rule 11(d) of the Code of Civil Procedure and the order passed by the learned District Judge-4, Jalgaon, in Regular Civil Appeal No.111/2015, on 10th of March, 2016, whereby he has remitted the matter back to the Civil Court with a direction to decide the point of limitation along with the other issues at the time of final hearing of the suit, it is apparently revealed that both the aforesaid orders cannot be sustained.

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2. Clause (d) of Rule 11 of Order VII of the Code of Civil Procedure authorizes rejection of a plaint where a suit appears, from the statement in plaint, to be barred by any law. While recording a conclusion that the suit is barred by limitation, the reasons recorded by the trial Court are insufficient and it is difficult to gather from the discussion made by the learned Civil Judge in the said order as to which are the averments in the plaint which led him to the conclusion that the suit is barred by limitation. In a sense, the order is cryptic.

3. Similarly, the view taken by the learned District Judge and the conclusion accordingly recorded by him that under Order VII Rule 11(d) of the Civil Procedure Code the plaint cannot be rejected on the point of limitation in absence of evidence and merely on the basis of the pleadings also cannot be supported.

4. It is the contention of the original defendant i.e. the present appellant, that from the averments of the suit plaint and the documents placed on record by the plaintiff in support of said contentions, a concrete conclusion can be recorded that the suit is barred by limitation. Per contra, it has been submitted on behalf of the original plaintiffs that the necessary averments are -

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there in the suit plaint clarifying that the suit filed by the plaintiffs is well within the period of limitation.

5. From bare perusal of Order VII Rule 11, clause (d), it is clear that the suit must appear from the statement in the plaint to be barred by any law. To decide whether a suit is filed within the period of limitation or is barred by limitation, it may not be a requirement in every such suit to look into the entire facts of the case and the issue of limitation can be independently tested without going into the merits of the other issues. In the circumstances, the order passed by the learned District Judge, directing the trial Court to decide the point of limitation along with the other issues at the time of final hearing of the suit, cannot be subscribed.

6. In the aforesaid circumstances, it appears to me that the application at Exh.28 filed by the present appellant requires a fresh hearing by the trial Court. When such suggestion was made by this court, learned counsel appearing for the parties have also agreed for re-hearing of the said application at Exh.28. I, therefore, deem it appropriate to pass the following order:

ORDER

1) The order passed by the learned District Judge in Regular Civil Appeal No. 111/2015 as well as the order

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passed by the trial Court below Exh.28 on 6.7.2015 stands quashed and set aside.

2) The matter is remitted to the trial Court to hear the application at Exh.28 afresh by giving adequate opportunities to the respective parties to the litigation for making their submissions on the basis of the material which was before the said Court while previously deciding the said application by the said Court on 6th of July, 2015, and to decide the said application by giving adequate reasons.

3) The parties to appear before the trial Court on 30th of August, 2016, which, as informed by the parties is the date given in the proceedings in the trial Court.

4) It is clarified that all the legal issues raised by the parties in the proceedings before this Court are kept open.

5) The trial Court to expedite the hearing of the said application and decide it preferably within two months from the appearance of the parties before the trial Court.

6) Civil Applications, if any, stand disposed of.

(P.R. BORA, J.)

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